

83-826

No.

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ALEXANDER L. STEVAB.

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In the Supreme Court of the United States

October Term, 1983

HAMED & SALEM, INC.

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

PETITION FOR WRIT OF CERTIORARI

SUPPLEMENTAL APPENDIX

To the United States Court of Appeals

For the Sixth Circuit

CHARLES MOSLEY  
Counsel of Record  
409 Marion Building  
1276 West Third St.  
Cleveland, Ohio 44113  
(216) 861-3058

October 1, 1983

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

OPINION INCLUDING FINDINGS OF FACT  
AND CONCLUSIONS OF LAW

(Filed September 22, 1981)

No. C 80-393

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HAMED & SALEM, INC.

Plaintiff

v.

UNITED STATES OF AMERICA

Defendant

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BEFORE: LAMBROS, DISTRICT JUDGE

This action, having come on for trial on September 21, 1981 pursuant to 7 U.S.C. §2023, seeks review of a decision of the Secretary of Agriculture disqualifying plaintiff from participation in the food stamp program for a period of one year.

While plaintiff has entered a general denial of each violation charged, the basic facts are not in dispute. On six different occasions in September, 1978, the plaintiff accepted food

stamps in payment for non-food, ineligible items and was duly notified of these charges by a letter from the Midwest regional Office of the Food and Nutrition Service (FNS) dated November 27, 1978. Plaintiff replied to the charges by a letter from its attorney dated December 15, 1978, requesting that any penalty involved be administered under the Food Stamp Act of 1977 which makes provision for the imposition of a fine as an alternative to the disqualification provision of the 1964 Act. On February 22, 1979, however, the Regional Director notified plaintiff that it was disqualified from participation in the Food Stamp Program for a period of one year, and this disposition was sustained by the Administrative Review Officer on March 3, 1980. Imposition of the sanction has been stayed by this Court pursuant to 7 U.S.C. §2023.

It is plaintiff's contention that this Court should remand the case to the Secretary of Agriculture with instructions to reconsider the penalty imposed in light of 7 C.F.R. §278.6(g), which would require the FNS to consider the imposition of a civil money penalty if disqualifications of the plaintiff would cause a hardship

to food stamp households in the area. This particular provision was unavailable under the 1964 Act, where disqualification for a period of up to three years was the only penalty provided. Congress, however, in enacting the 1977 amendments found that the monetary penalty was a needed addition in order to balance the various needs of the consumer, the business, and the Department of agriculture. See H.R. Rep. No. 95-345, 95th Cong., 1st Sess. 397-98, reprinted in [1977] U.S. Code Cong. & Ad. News 1941, 2326. Although the amendments bore an effective date of October 1, 1977, regulations formulated pursuant thereto, including 7 C.F.R. [278.6(g)], did not become effective until January 1, 1979.

Foreseeing that there would be a transition period between the effective date of the 1977 amendments and the promulgation of the new regulations, Congress provided that

(a) The Secretary of Agriculture shall implement the Food Stamp Act of 1977 as expeditiously as possible consistent with the efficient and effective administration of the food stamp program. The provisions of the Food Stamp Act of 1964, as amended, which are relevant to current regulations of the Secretary governing the food stamp program, shall remain in effect until such

regulations are revoked, superseded, amended, or modified by regulations issued pursuant to the food Stamp act of 1977....

(b) Pending proceedings under the Food Stamp Act of 1964, as amended, shall not be abated by reason of any provision of the Food Stamp Act of 1977, but shall be disposed of pursuant to the applicable provisions of the Food Stamp act of 1964, as amended, in effect prior to the effective date of the Food Stamp act of 1977 (effective Oct. 1, 1977).

Pub. L. 95-113, §1303, 91 Stat. 979; 7 U.S.C. §2011, note.

This Circuit has specifically held that it is reversible error to remand a case to the Secretary for reconsideration in light of §278.6(g) if the alleged violations occurred prior to the effective date of the 1977 amendment, Addison Savmore, Inc. v. United States, No. 79-3485 (6th Cir. June 8, 1981), and other courts have held that "[t]he Secretary's decision, in the interest of orderly and efficient administration of the food stamp program, to apply the regulation [7 C.F.R. §276.8 (g)] to violations occurring subsequent to January 1, 1979 [is] not inconsistent with section 1303 [the implementation provision]." Kulkin v. Bergland, 626 F.2d 181, 187-88 (1st Cir. 1980). See also Cass Corridor Food Coop v. United States,

512 F. Supp. 925, 931 (E.D. Mich. 1981).

The Violations herein complained of having occurred prior to January 1, 1979, and having concluded that the old regulations could be applied, this Court hereby affirms the decision of the Secretary of Agriculture, rendering Judgment in favor of the defendant.



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